

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2844

Heard in Montreal, Wednesday, 9 April 1997

concerning

ST. LAWRENCE & HUDSON RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
[UNITED TRANSPORTATION UNION]**

DISPUTE:

Appeal of the assessment of nine (09) demerit marks to Conductor Martin Bangert.

JOINT STATEMENT OF ISSUE:

Conductor Martin Bangert was assessed nine (09) demerit marks on October 5, 1995 for:

“... your planned and premeditated tampering with Company equipment by means of obstruction of a video camera lens at the booking in room at the Toronto Yard Office on September 16, 1995, thereby rendering the audio-visual system ineffective.”

The Union submits that this conduct was simply carried out on the “spur of the moment”; accordingly, it is incorrect for the Company to characterize Mr. Bangert’s actions as “planned and premeditated”.

The Union requested that the nine (09) demerit marks be expunged from Mr. Bangert’s record.

The Company declined the Union’s appeal.

FOR THE COUNCIL:

(SGD.) D. A. WARREN
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. CHEHOWY
FOR: DISTRICT GENERAL MANAGER

There appeared on behalf of the Company:

H. B. Butterworth	– Labour Relations Officer, Toronto
M. Senécal-Tremblay	– Counsel, Montreal
G. Chehowy	– Manager, Labour Relations, Toronto

And on behalf of the Council:

P. Sadick	– Counsel, Montreal
D. A. Warren	– General Chairman, Toronto
M. Bangert	– Grievor

AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that the Company installed a video camera, coupled with an audio system, in the booking room at the yard at Toronto. That system allows the Yard Operations Director, located in the Hump Tower, to communicate with crew members in the booking room in respect of assignments and, obviously, affords supervisors a further degree of facility in determining the whereabouts of crew members, when necessary.

It is admitted that during the course of his tour of duty on September 16, 1995, as a prank, Conductor Bangert obstructed the lens of the video camera by placing a piece of paper in front of it. The fact that, as the Union asserts, the same prank may have been played in the past by others is, in the Arbitrator's view, of no consequence with respect to the right of the Company to take action against Mr. Bangert, having identified him as the person responsible. Very simply, his conduct was inexcusable, whether it be characterized as minor vandalism or an ill-considered practical joke. Disabling any part of a communications system is a matter which, in the Arbitrator's view, the Company was entitled to take seriously through the process of discipline.

In the Arbitrator's view the assessment of nine demerits was not unreasonable in the circumstances, and should not be disturbed. The grievance is therefore dismissed.

April 12, 1997

(signed) MICHEL G. PICHER
ARBITRATOR